THE HON'BLE SMT JUSTICE T.MEENA KUMARI

AND

THE HON'BLE SRI JUSTICE P LAKSHMANA REDDY

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Writ Appeal No. 1776 OF 1993

Dated: 10-2005

Between:

C. Gopinath Reddy, s/o. Venkat Ram Reddy,

Hindu, aged about 44 years, Casual Labourer,

R/o. Thondavada Village, Chandragiri Mandal,

Chittoor District

..Appellant

And

Sri Acharya N.G. Ranga Agricultural University,

Rajendranagar, Hyderaba, rep. by its Registrar

..Respondent

THE HON'BLE SMT JUSTICE T.MEENA KUMARI

AND

THE HON'BLE SRI JUSTICE P LAKSHMANA REDDY

WA No. 1776 OF 1999

JUDGMENT: (per the Hon'ble Smt. Justice T. Meena Kumari)

1. This writ appeal is filed being aggrieved by the dismissal order dated 10-9-1999 of a learned Single Judge of this Court passed in W.P. No. 9561 of 1999, wherein the appellant herein challenged the proceedings dt.

20.4.1999 of the respondent canceling his appointment as Agricultural Extension Officer and sought a direction to hold that he is entitled to be appointed in the said post.

2. The brief facts that led to filing this writ appeal are as follows:- It is the case of the appellant that he was initially appointed as Educated Casual Labour with effect from 6-5-82 at Agricultural Research Station, Perumallapalli, that he is fully qualified for appointment as Agricultural Extension Officer (Sub-Assistant), that while so, the respondent by proceedings No.915/SC/95 dt. 20.5.1995 passed orders for absorption of casual labourers by way of direct recruitment in the posts of Sub-Assistants and other posts as one time measure in terms of the orders issued in G.O.Ms.No. 212 Fin.&Plg. (F.W.P.C.III) Department dt.22-4-94 against the vacancies arising upto 20-5-1995. Pursuant to the said decision, the appellant along with 17 educated casual labourers have been appointed as Agricultural Extension Officers temporarily in the pay scale of Rs.1745-3420 (RPS 93) by proceedings No.831/Ser.V(A2)/99 dt.17-4-99 of the respondent, and he was posted at ECF Scheme, Nandyal. However, by impugned memo No.10606/Ser.V(A2)99 dt. 20-4-99 the appointment order issued by proceedings dt.17-4-99 in respect of the appellant was cancelled. Questioning the same, he filed the above writ petition.

3. The respondent University contested the writ petition and filed counter affidavit by stating that in pursuance of the orders issued by the Government dt.16-10-98 vide G.O.Ms.No.231/Fin.&Planing (FWPC-III) the services of persons continuing on rolls as on 25.11.93 and having completed continuous minimum period of 5 years of service on or before 25-11-93 shall be regularised in the substantive vacancies and accordingly the university permitted them to regularize the services of such persons who are continuing on rolls as on 25-11-93. The University took a decision to absorb them in the substantive vacancies subject to fulfillment of conditions stipulated in G.O. Ms. No. 212, dt.22-4-94. Accordingly, 18 educated casual labourers including the appellant, who are working on daily wages, have been appointed as

Agricultural Extension Officers by proceedings dt. 17-4-99. Later on it was found that the petitioner is over aged as on the date of appointment as Agricultural Extension Officer, hence the same was cancelled by impugned memo No.10606/Ser.V(A2)/99. It is the further case of the University that as far as recruitment, it is following the rules of the State Government with regard to age factor for appointment to regular posts under direct recruitment. Hence, the age limit for appointment to the candidates under direct recruitment is 34 years. As per APAU Farm Service Regulations issued vide proceedings No.1024/SC/82 dt.8-11-82 in the case of casual labourers seeking appointment to any post in the direct recruitment, his age shall be computed for the purpose of this regulation by deducting from it the number of completed years of service put in by him as casual labourer under the University subject to a maximum of 10 years. The said relaxation is applicable up to 44 years at the time of appointment. Even after the said relaxation is applicable to the writ petitioner, he is 44 years 7 months and 16 days and hence he is not entitled to be appointed as Agricultural Extension Officer and the same was cancelled by the impugned memo.

4. After going through the record, the learned single Judge, dismissed the writ petition on the ground that the writ petitioner was over-aged and as he is not eligible as per service regulations cannot claim for absorption contrary to the rules. Aggrieved by the same, the present writ appeal.

5. In the writ appeal, an additional counter affidavit has been filed by the respondent-University stating that the appellant worked as Casual Labourer from 6-5-1982 to 12-10-1999 and that the appellant was continuously absent from 13-10-1999 to till date, as the break of service has exceeded more than 6 months his name was removed from the muster rolls and the seniority list w.e.f. 13.10.1999 and as such he is no more on the rolls of casual labourer and that in view of the ban for engagement of casual labourer the appellant cannot be taken back as casual labourer. It is further stated in the additional counter that as per G.O. 212, regularisation of services of casual labourer is done based on the seniority, eligibility, subject to rule of reservation and that during the period of appellant's casual labourer service, his turn has not come up

for regularization for any Class IV post under the unit in which he was working and hence, the writ appeal is not maintainable.

6. The learned Counsel appearing on behalf of the appellant argued that that the learned single Judge after going through the proceedings has held that GOMs No.212 dt. 22-4-1994 is only guidelines for regularizing the services. Learned single Judge also held that conditions laid down in GOMs No.212 are only the terms calculated to condone any procedural irregularities and are meant to cure only such defects as are attributable to the methodology followed in making the appointments.

7. Learned Counsel further argued that the order of cancellation of the appointment is irregular as the age calculation has to be reckoned only from the date of appointment as casual labourer i.e., on 6-5-1982 but not on 17-4-1999 the date on which temporary appointment was issued as Agricultural Extension Officer. The learned Counsel has further argued that as one of the conditions i.e., condition No.2 in GOMs NO 212 dt. 22-4-94 lays down that a person should be within the age limit as on the date of his appointment as NMR. Even assuming that the appellant is not entitled to hold the post of Agricultural Extension Officer, but he is entitled to be regularised as NMR as his appointment as NMR is not in dispute and he was also within the age limit as per the conditions laid down in the above Government Order. It is also further established that he has complied with all the conditions laid down in GOMs No. 212, dt. 22-4-1994 and a duty is cast upon the University to regularize the appellant's services as NMR in view of the fact that he has completed 5 years of service and also the other conditions and he was continuing on rolls as on 25-11-1993.

8. The contention raised by the petitioner has been countered by the respondent-University by arguing that the University has issued orders regularizing the services of the persons appointed. It has been argued, basing on the contentions raised in the counter that the persons who have completed minimum 5 years of service and are continuing as on 25-11-1993 have been appointed on daily wage have been regularised by the orders of the University in terms of GOMs No. 212, dt. 22.4.1994 by the proceedings dated 20.5.1995. It is also further argued that after

20-5-1995 for filling up of the vacancies the prior permission of the Government is required.

9. It has been contended that even though 18 Educated casual labourers among whom the appellant was one were appointed on temporary basis by the proceedings in 1999, however, subsequently on verification as it was found that he was over aged on the date of his appointment on 17-4-1999 his appointment was cancelled on 20-4-1999. It is also further argued that the University is following the Rules of the State Government and the upper age limit for the appointment of the post is 34 years. It is further argued that the date of age has to be considered with reference to the appointment made on regular basis not with reference to NMR or daily wage employees and the GO Ms 212 cannot be extended to the direct recruitment posts and the said clause is applicable to regularize class-IV posts. It is further argued that appellant is not eligible for regularisation of his services in the year 1995 in view of the fact that his turn has not come during his service as casual labour.

10. In view of the rival contentions of both the appellant as well as the University, it has to be seen whether the appellant is entitled to be regularised even in the post of NMR in pursuance of the proceedings dated 20.5.95. The appellant was appointed as an Educated Casual labourer on 6-5-1982 and the University by a resolution decided to adopt GOMS No. 212, dt. 22-4-1994. However, in view of the fact that the appellant was over aged to hold the post of Agricultural Extension Officer as he has crossed 44 years, his services have been cancelled. Even though the proceedings goes to show that the appointment was only on temporary basis, yet there is no argument advanced on behalf of the respondent university that the appellant cannot be regularised in pursuance of GOMs No. 212 Fin& Plg.(FWPC III) Dept, dated 22.4.1994 as the respondent should have taken a decision to revert him back to the post he was holding as NMR instead of terminating his services in view of the fact that he is over aged. A statement made in the counter that proceedings have been issued by the University on 9-10-1998 in proceeding No. 2437/SC/98 to all appointing authorities permitting them

to regularize the services of such persons, who are continuing on rolls as on 25.11.1993 provided they have completed a continuous minimum period of 5 years of service on (or) before 25.11.1993 either on daily wages or nominal muster rolls or consolidated pay or as on contingent worker on full time basis in substantive vacancies that arose after 20.5.95 subject to fulfillment of conditions stipulated in G.O.Ms.No.212/FWPC-III. Fin.&Plg, Dept., dt. 22.4.94. In view of the above contention, a duty is cast on the respondent University to consider the case of the appellant herein to regularize his services on the basis of guidelines laid down in the proceedings following the fulfillment of the conditions stipulated in GO Ms No.212, dt. 22-4-1994. It is not the case of the respondent university that the appellant's case cannot be considered for regularisation in the NMR in pursuance of the GOMs No. 212 dt.22.4.94. But, their case is only with reference to the holding of post of Agricultural Extension Officer on the ground that he is over aged. In view of the above circumstances, it has to be held that the action of the respondent University in removing the appellant from the services even without notice is held to be violative of principles of natural justice. There is no material placed before this Court by the respondent University that the appellant has not fulfilled the conditions that laid down in GOMs. No. 212, dt 22.4.1994 as the appellant herein has continuously worked from 1982 onwards as a casual labourer and in view of the same it has to be held that the University has committed an error in not regularizing his services as NMR.

11. The contention raised in the additional counter that the appellant was continuously absent from 13-10-1999 cannot be accepted as he worked as casual labourer from 6-12-88 to 12.10.99 that is by the date the respondent University had issued proceedings permitting the authorities to regularize the services of casual labourer or NMR, the petitioner was on rolls and hence the respondent University ought to have regularised his services in the post of NMR even though they have terminated his services as Agricultural Extension Officer as per their own proceedings. Accordingly, the writ appeal is allowed with a direction to regularize the

services of the appellant as per his entitlement.

12. Under the above circumstances, we set aside the order passed by the learned single Judge and direct the University to regularize the services of the appellant herein in pursuance of the proceedings of the respondent University on 9.12.1998 as he continuously worked for 16 years in the respondent University.

T. MEENA KUMARI, J

P. LAKSHMANA REDDY, J

THE HON'BLE SMT JUSTICE T.MEENA KUMARI

AND

THE HON'BLE SRI JUSTICE P LAKSHMANA REDDY

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Writ Appeal No. 1776 OF 1999

(Order of the Division Bench made by the

Hon'ble Smt Justice T Meena Kumari)

October 2005

To

SRI K. SUBRAHMANYAM

Hariman Book Sellers

Opp. LIC Building,

804; Anna Salai,

C H E N N A I – 600 002

However, as the charge framed with regard to keeping of Nitric Acid open and

also with regard to his personal quarrel with the employee in Security zone, even though the charges are proved, it has to be held that the charges are not so serious for imposing a punishment of removal. As the punishment imposed is disproportionate with the charges, we deem it proper to modify the punishment to that of the fresh appointment from the date of passing of the order. The respondent herein has stated in his affidavit that he is prepared to accept the appointment of the petitioner as afresh.

Under the above circumstances, we modify the order of the learned Single Judge to the effect that the disciplinary authority should modify the punishment of compulsory retirement to that of fresh appointment from the date of passing of the order without any monetary benefits.

With the above modification, the writ petition is allowed. No order as to costs.

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